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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ADAM S., JR., et al., Persons Coming
Under the Juvenile Court Law.

B174329
(Los Angeles County
Super. Ct. No. CK54438)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADAM S., SR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.
Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Jesse Frederick Rodriguez, under appointment by the Court of Appeal, for
Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,
and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Adam S., Sr., (father), the father of Adam S., Jr., (Adam), Shaun S. (Shaun), and Angel W-S. (Angel) (collectively the minors) appeals from the following juvenile court dispositional findings: (1) that father was not nonoffending under the Welfare and Institutions Code section 300¹ petition filed by the Los Angeles County Department of Children and Family Services (DCFS); and (2) that it would have been detrimental to place the minors with father (§ 361.2). Father also urges that the juvenile court abused its discretion in (1) ordering him to undergo alcohol testing and attend parenting classes (§ 362), and (2) initiating an Interstate Compact on Placement of Children (ICPC) evaluation on father's home in Louisiana before considering whether to place the minors with him (Fam. Code, § 7900 et seq.).

We affirm the juvenile court's orders. (1) Father's notice of appeal does not include the juvenile court's order that he undergo alcohol testing and attend parenting classes. (2) Father's challenge to the juvenile court's order pursuant to section 361.2 that it would have been detrimental to place the minors with him is moot. (3) As father concedes, the issue regarding the ICPC evaluation is moot.

FACTUAL AND PROCEDURAL BACKGROUND

This matter came to the attention of DCFS on January 24, 2004, when Shaun called the police because his mother, Sally S. (mother), was acting delusional and highly agitated. When the police arrived, the minors were in the lobby of the hotel while the mother was speaking words of God and rambling nonsensibly about a host of subjects. Mother admitted to being bipolar and to not having taken her psychotropic medication for weeks. Mother told the police that she saw rays of light coming out of the television and into her children's heads. She also said that she had not eaten anything for three days because there were witches in her head telling her not to eat. She told the minors that they were possessed. The minors were taken into protective custody and mother was

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

hospitalized on an initial 72-hour hold. According to Adam, father had abandoned the minors and was living in Louisiana.

DCFS Petition and Initial Hearing

On January 28, 2004, DCFS filed a juvenile dependency petition alleging that the minors came within the jurisdiction of the juvenile court under section 300, subdivision (b). Specifically, the petition alleged that mother has mental and emotional problems, including bipolar disorder, had failed to take her psychotropic medication, and had demonstrated visual and auditory hallucinations and delusional thinking while the minors were in her care. The petition also alleged that mother had a history of psychiatric hospitalization.

At the hearing, the juvenile court appointed counsel for father. The juvenile court then ordered the minors detained. It also ordered DCFS to set up telephone contact between the minors and father and ordered an expedited ICPC on both father and the maternal grandmother, who resided in Arizona. The matter was then continued for a pretrial resolution conference.

DCFS Report and Pretrial Resolution Conference

In the DCFS February 25, 2004, jurisdiction/disposition report, Adam reported to the social worker that mother had been hospitalized three or four times for acting oddly. He also stated that both mother and father had given the minors “whoopings” on the buttocks with a belt, and at times while they were only wearing underwear. Father, however, had not punished him in such a manner since 1998 or 1999. According to Adam, mother told him that when the minors were younger, father drank all of the time. Father told Adam that he stopped drinking when he realized the importance of his family. Adam also stated that mother kicked father out of the house when they lived in Arizona in 1999 or 2000. Father did not want to take the minors from mother because father felt that the minors should be with their mother and mother would not let them go. As for his parents’ relationship, Adam recounted one incident when father grabbed mother “like a wrestling move” when father “might have been” drunk and mother had slapped father.

Finally, Adam stated that he did not want to live with his mother or to see her weekly, but that he wanted to live with his father.

The social worker interviewed Shaun as well. Shaun stated that mother heard voices in her head and that she thought Angel had the devil in her. He recalled mother being hospitalized for mental problems at least four times. He stated that both mother and father would whoop them with a belt as a punishment. One time, she whopped him and Adam because she believed that they were molesting Angel. He never saw father hit mother. Like Adam, Shaun stated that he did not want to go back to his mother and that he missed this dad. In fact, he commented that “none of this was my dad’s fault and he left because he didn’t want to make it worse.”

The social worker also spoke with Angel. She was not sure whether she wanted to see her mother, although she eventually stated that she did want to see her. When the social worker asked Angel about father, Angel’s face lit up. She had an incredibly big smile and became very excited. She talked about how she missed father and that she loved him. She very much wanted to see him.

Mother told the social worker a different story. She alleged that father was “mentally and emotionally abusive” to her and the minors. She claimed that father was using alcohol and drugs up until they separated in 2001, and even accused him of bringing drugs, including crack cocaine, into their home. Mother also said that she witnessed his drug use in the home in 1997 while the minors were there. She claimed that she and father separated because of his drug use and mental and emotional abuse.

According to mother, one day father had the minors on a visit and would not return them to her. Instead, he called the police and told them that mother was crazy. As a result, she was hospitalized for three months. She was diagnosed with bipolar disorder, although she did not admit that she was mentally ill. Mother claimed that father had a history of psychiatric hospitalizations and a diagnosis of major depression for which he was supposed to be taking medication. She also claimed that father was physical with her and that he hit the minors as well. She claimed that Angel had reported that father had molested her, but that the police did not find any evidence to support the allegation.

Mother was hospitalized again in 2002. During that time, the minors stayed with their maternal grandmother. In March 2003, mother and the minors moved to San Bernardino to live with Mildred W. (Mildred), a maternal aunt.

Mother denied having mental or emotional problems, although she admitted to having been diagnosed with bipolar disorder. She denied “failing” to take her medication, claiming instead that the doctor advised her that it was optional. She also denied having visual and auditory hallucinations.

The social worker interviewed father too. He and mother met in 1988, married in 1989, and legally divorced in 2003. He became aware of mother’s mental health issues in around 1999 when mother began accusing him of raping the minors. Mother had a breakdown and was hospitalized. While under observation, mother told the doctors that father was raping the minors and the matter was sent to juvenile court. Mother also accused Adam and Shaun of inappropriately touching Angel. The police interrogated father and examined the minors. Ultimately, the case was dismissed.²

Also, at some point in 2001, the Louisiana Department of Social Services was involved with the minors, who were released to father’s custody pending a child protection investigation. That child neglect case was closed in May 2002 because father demonstrated the ability to provide appropriate supervision and care for the minors and had assumed primary care of his children.

In 2002 mother again was committed to a mental health ward of a hospital for three or four months. At that time, father took the minors home. Shaun told father that mother had accused Shaun of molesting Angel and had tied Shaun to her leg using a necktie. Father then went to the police to discuss committing mother long term. Mother

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Attached to the DCFS report were emergency department discharge instructions from a children’s hospital in Louisiana that contained mother’s allegation that father had molested the children and the hospital’s finding that a history and physical examination of the minors did not support mother’s accusations.

was hospitalized and diagnosed with bipolar disorder. According to the doctors, mother was seriously sick.

While the minors were in his custody, father contacted protective services for assistance. They were placed with him. Upon mother's discharge, the social workers convinced father to let mother take the minors to Arizona to their maternal grandmother's home. After approximately one month, the maternal grandmother did not want mother in her home. She called father to come help with the minors. He went to Arizona to get an apartment for him and his family. Mother told father that she did not want him to talk to their children alone. When he did, mother locked him out of the house. After about one week, father moved back to Louisiana. He then learned that mother was rehospitalized for "banging on walls, playing religious music."

At some later time, father learned that mother had moved to San Bernardino to live with Mildred. He came to California after Mildred informed him that mother was acting deranged. While in California, father stayed with Mildred until he found housing. After two days, mother wanted Mildred to throw him out of the house. Mother called the police, who came to the home and treated father poorly. Father eventually flew back to Louisiana after the incident.

Father provided the social worker with a document from the Louisiana juvenile court vacating the protective order, returning the minors to mother, and closing the case. Father stated that he would be able to provide for the minors' needs if they were sent back to him. He indicated that he wanted custody of his children.

The social worker submitted a document confirming that father had completed a "Foundations in Fathering" course on July 16, 2002. Despite mother's claim that father had abused the minors, the information provided by father suggested that this charge was unsubstantiated.

The minors' maternal grandmother, who resided in Arizona, stated that she was in no condition to care for her grandchildren and thought that they should go live with father if they wanted to because he would take care of them. She commented that "[t]hey love their dad and he loves his children." She believed that father had "matured" and would

take better care of his children. She thought that at one time father had a drug and/or alcohol problem, but this might have been about two or three years ago.

The social worker interviewed Mildred too. She reported that she had observed mother hallucinating and acting bizarrely. She believed that the minors would be endangered if they were sent back to their mother. She commented that father “really cares about his kids.” He sent the minors gifts from time to time and tried to come out and help mother, who turned father away. He was the minors’ primary caretaker when they lived in Louisiana. Mother admitted to Mildred that when they first got to California, father had been the one attending to the minors. She found it hard to believe that father had been abusive to the minors when they all cried to be with him. She believed that father would be the best fit parent. “He works hard. Mentally he is there . . . he loves his kids. He does things for his kids. He buys them things . . . the kids would do better. They would be better off with their dad.”

Dr. Romeo Villar, mother’s psychiatrist, stated that he saw mother in July and August 2003, and February 2004. He commented that mother was “not very compliant.” According to Dr. Villar, mother presented with symptoms of mood swings, sleep deprivation, delusions, and hallucinations. Her initial diagnosis, which was unchanged, was bipolar with psychosis. Contrary to mother’s claims, Dr. Villar never told her that the medication he prescribed was optional.

Based upon the foregoing, the social worker recommended that custody be taken from the parents and committed to DCFS for suitable placement. DCFS recommended family reunification services and that father have monitored visits.

At the February 25, 2004, pretrial hearing, father made his first court appearance. He requested that the minors be released to him on the grounds that he was nonoffending in the petition and that the minors wanted to return to him. Although father resided in Louisiana, he made arrangements to be present at the court hearing. The minors’ attorney similarly informed the juvenile court that the minors wanted to be returned to their father as soon as possible. According to their attorney, the minors indicated that mother made

false allegations against father in the past as a way to obtain custody. The minors insisted that they were always safe in father's care and he had always been involved in their lives.

The juvenile court denied father and the minors' request to place the children with father in Louisiana on the grounds that it had initiated an ICPC. "I have a legal problem, which is I've initiated an investigation, and once I'm done, I'm bound by [ICPC], and [ICPC] says I can't send those children until I get a cleared [ICPC]. It's not factual. I have a legal issue here. [¶] If father lived here in the state, it wouldn't be the same issue, but once he lives out of state and I have initiated an investigation, I am bound by [ICPC]. [¶] . . . [¶] It sounds very much this is where these kids are going to end up, but I am bound by law not to send them at this time."

The matter was then set for trial. The juvenile court granted father's request for a waiver of his appearance because of the financial strains of traveling back and forth from Louisiana. The juvenile court then ordered visits for father to include unmonitored overnight and weekend visits while he was in California.

Further DCFS Report

On March 15, 2004, DCFS filed an interim review report with the juvenile court. In it, the social worker submitted a completed psychiatric evaluation of mother by Dr. Alvin Mahoney. Dr. Mahoney noted that mother was extremely paranoid, delusional, and worried about witches. He had mother certified as an imminent danger to others, gravely disabled, and inappropriate to be around her children. He described mother as extremely angry and hostile. She demonstrated poor impulse control and poor judgment. He diagnosed mother with "schizoaffective disorder, bipolar." He recommended that mother be placed on a 72-hour hold, that she be placed on medication, and that she undergo reality integration therapy and behavioral modification.

Jurisdictional Hearing

Between March 15, 2004, and March 22, 2004, the jurisdictional hearing was held. Both Adam and Shaun testified that they would prefer to live with father.

Following the presentation of evidence, the juvenile court sustained the following allegations in the petition: mother “has mental/emotional problems including but not limited to a diagnosis of bipolar disorder” and has “failed to take her psychotropic medication” and has “demonstrated visual and auditory hallucinations and delusional thinking while the children were in her care”; mother also “has a history of psychiatric hospitalizations.” In so ruling, the juvenile court commented “that mother’s mental illness has put these children at grave physical and emotional risk,” although there was no real indication that the minors were or at risk by mother’s “whoopings.”

The minors’ counsel then pointed out that father was nonoffending and that the children desired to be placed with him. Father’s counsel then argued that there was no clear and convincing evidence of detriment to the children in placing them with father. She urged the juvenile court to place the minors with father in Louisiana and terminate jurisdiction. The juvenile court then commented: “One of the things I agree with . . . is this petition is very under pled, and that includes against father. There are allegations in this report by the children of physical abuse when they were with him -- domestic violence and alcohol abuse. By the children, not just the mother. So I certainly do not see father as, quote, ‘non offending’ in this petition.”

The matter was then continued for a contested dispositional hearing.

Continued Dispositional Hearing

At the March 30, 2004, dispositional hearing, father’s counsel again requested that the minors be released to him and that the juvenile court terminate jurisdiction on the grounds that there was no clear and convincing evidence that the minors would be at risk if placed with him. Instead, “if anything, the evidence that is before the court in the reports state that there was a time when Louisiana courts had released the children to their father after investigating him as a placement, and at this time that’s what the father is requesting.”

Despite father’s desire for custody, the juvenile court found “by clear and convincing evidence [that] placement with the father would be detrimental to the safety, protection, physical, and emotional well-being of the children.” The juvenile court

elaborated: “[T]here’s clear and convincing evidence that placement with father based on his issues that I went through at adjudication of physical abuse, et cetera in the past when the children were with him makes it detrimental to them to be placed there.”

The juvenile court declared the minors dependents of the court and ordered custody of the minors removed from the parents and placed under DCFS supervision for suitable placement. The juvenile court ordered family reunification services for father, including parenting classes and random alcohol testing. It changed father’s visitation order from unmonitored overnight visits to monitored visits. The matter was continued for a six-month review hearing.

Father’s Notice of Appeal

On March 30, 2004, father timely filed his notice of appeal. As relevant to this appeal, the form provides: “I appeal from the findings and orders of the court . . . : [¶] 5-30-04 [¶] Disposition findings of clear and convincing evidence of [¶] risk of placement of minors with father. [¶] Orders of monitored visitation for father. [¶] ICPC required before placement w/non offending father. ” On the second page of the form, father checked “[section] 360 (declaration of dependency)” and “Removal of custody from parent or guardian” and specified under “Dates of hearing: 3-30-04, 3-22-04, 3-19-04, 3-18-04, 3-16-04, 3-15-04.”

Subsequent Juvenile Court Orders

On July 20, 2004, DCFS received approval from the State of Louisiana for the minors to be placed with father. DCFS recommended to the juvenile court that the minors be placed with father. On October 20, 2004, the juvenile court ordered the minors placed in father’s home and terminated its March 30, 2004, order for suitable placement. The minors have since been transported to Louisiana and are in father’s custody.

DISCUSSION

I. Father's Notice of Appeal Does Not Include His Challenge to the Juvenile Court's Order that he Complete a Parenting Program and Submit to Random Alcohol Testing

DCFS contends that father failed to appeal from the juvenile court order that he complete a parenting program and submit to random alcohol testing. Because the juvenile court took several actions on March 30, 2004,³ and father's notice of appeal refers to some of those actions, but not these two specific orders, DCFS contends that no appeal from the orders to complete a parenting class and submit to random alcohol testing was properly taken. We agree.

Generally, "[t]he notice of appeal must be liberally construed." (Cal. Rules of Court, rule 1(a)(2).) That being said, the rules of court also require that the judgment or order appealed from, or part thereof, should be specified, namely described in such a manner as to make its identification reasonably certain. (Cal. Rules of Court, rule 1(a)(2); *Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041, 1045.) As such, where there is no ambiguity in the notice of appeal and it refers only to a portion of the judgment, we are without authority to construe the notice liberally to include other parts of the judgment or other orders not set forth therein. (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 625.) In such circumstance, it is elementary "that an appeal from a portion of a judgment brings up for review only that portion designated in the notice of appeal." (*Glassco v. El Sereno Country Club, Inc.* (1932) 217 Cal. 90, 92.)

The portions of the orders designated by father in his notice of appeal concerned only (1) risk of placement of the minors with father, (2) orders of monitored visitation with father, and (3) ICPC evaluation prior to placing the minors with father. Applying

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As requested by father in his opening brief and unchallenged by DCFS in its respondent's brief, we deem the notice of appeal to be taken from the juvenile court orders made on March 30, 2004, not May 30, 2004. Given that the juvenile court took the referenced actions on March 30, 2004, and father's notice of appeal was filed on that date (before May 30, 2004), the reference to "5-30-04" is an obvious transcription error.

the foregoing legal principles, we conclude that father did not perfect an appeal on the issues of whether the juvenile court improperly ordered him to attend parenting classes and undergo random alcohol testing. Accordingly, those issues are not before us.⁴

II. *The Juvenile Court's Finding that it Would be Detrimental to Place the Minors with Father is Moot*

In this appeal, father challenges the juvenile court's March 30, 2004, order denying him custody of the minors, pursuant to section 361.2. On October 20, 2004, the juvenile court terminated its March 30, 2004, order for suitable placement and ordered the minors placed in father's home. In other words, as father concedes in his reply brief, father now has custody of his children. The issue is thus moot.

"[O]ur duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions." (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193.) Given that father now has custody of his children, father does not need us to grant him that request.

Citing *In re Joel H.*, *supra*, 19 Cal.App.4th at page 1193, father contends that the issue is not moot because the juvenile court's March 30, 2004, finding is res judicata and can be used against him in the future. We disagree. In *In re Joel H.*, three-year old Joel was declared a dependent child due to his mother's drug abuse and incarceration and the unknown whereabouts of his father. Joel was placed in the home of his maternal great-aunt, Diane L. (*Id.* at p. 1189.) Charges of neglect and abuse against Diane L. were leveled, leading ultimately to a juvenile court order permanently removing Joel from Diane L.'s custody. (*Id.* at pp. 1190, 1192.) Diane L. appealed.

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Given that we conclude that father's notice of appeal does not cover these two juvenile court orders, we need not address DCFS's alternate contention that father forfeited his right to challenge these orders on appeal because he failed to object to the juvenile court.

While her appeal was pending, the juvenile court terminated dependency jurisdiction over Joel and returned him to his mother's custody, and the department of social services argued that Diane L.'s appeal was rendered moot. The Court of Appeal disagreed: "Regrettably, it is entirely possible given the family history here that Joel H. may once again become the subject of dependency proceedings. Should this occur, the finding of physical and emotional abuse and order permanently removing Joel from Diane L.'s custody would have res judicata effect and would prevent a court from considering her home if Joel had to be removed from his mother's custody." (*In re Joel H.*, *supra*, 19 Cal.App.4th at p. 1193.)

In contrast, in the instant case, while the juvenile court originally determined that it would have been detrimental to place the minors in father's custody, the juvenile court eventually reversed itself and father now has custody of the minors. Thus, the March 30, 2004, order no longer adversely affects father, and there is no justiciable controversy for us to review. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.)

For the same reasons, father's objection to the juvenile court's comment that he was not nonoffending under the section 300 petition is also moot. As a matter of established appellate principle, the focus of our review is on the findings of the juvenile court in its written order, and not on its antecedent oral remarks. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329; 9 Witkin, Cal Procedure (4th ed. 1997) Appeal, § 340, pp. 382-383.) Here, following the presentation of evidence at the jurisdictional hearing, the juvenile court sustained allegations in the petition against mother; no allegations against father were made or sustained. Thereafter, the juvenile court commented that father was not "nonoffending," and at the subsequent hearing date, the juvenile court denied father's request for custody pursuant to section 361.2. Given that no allegations against father were sustained by the juvenile court, we conclude that the juvenile court's comments were made in the context of its section 361.2 order.⁵ As set

⁵ Father recognizes that his objection to the trial court's description of him as "not 'nonoffending'" arises in the context of custody and section 361.2.

forth above, father's challenge to that March 30, 2004, order is moot. It follows that any objection to the juvenile court's secondary remarks is also moot.

III. *Father's Challenge to the Juvenile Court's Order for an ICPC is Moot*

As father concedes in his reply brief, his challenge to the trial court's order requiring an ICPC on his home in Louisiana is moot. We need not address this issue.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD